

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:FIP:B02

PLR-141327-09

Date:

November 03, 2009

### Legend:

Taxpayer =

Corporation =

State A =

State B =

x =

Advisor =

Lawyer =

Accountant =

Month 1 =

Month 2 =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This is in reply to a letter dated September 11, 2009, requesting a ruling on behalf of Taxpayer and Corporation. Specifically, you have requested that Taxpayer and Corporation be granted an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to file Form 8875, Taxable REIT Subsidiary Election, so that Taxpayer and Corporation may jointly elect for Corporation to be treated as a taxable REIT subsidiary (TRS) of Taxpayer effective Date 3.

**Facts:**

Taxpayer was incorporated under the laws of State A on Date 2 and intends to make an election to be treated as a real estate investment trust (REIT) under subchapter M of the Internal Revenue Code effective for the Year 1 tax year. Corporation was formed as a limited liability company under the laws of State B on Date 1 and filed an election under section 301.7701-3(c) of the Income Tax Regulations to be taxed as a corporation for federal income tax purposes. Taxpayer owns x% of the interests in Corporation.

Taxpayer and Corporation are externally managed and advised by Advisor and its affiliates. The vice president of tax of Advisor (Vice President) is the primary advisor on tax matters for Taxpayer and Corporation.

Advisor organized Taxpayer for the specific purpose of qualifying as a REIT that would own healthcare properties and lease such properties to a TRS. Taxpayer and Corporation intended to make a joint election under § 856(l) to treat Corporation as a TRS of Taxpayer.

REIT and Corporation closed on the purchase of a healthcare properties portfolio in Month 1 of Year 1. Since the closing of the acquisition, Advisor has monitored the operations and activities of REIT to ensure compliance with REIT requirements. Furthermore, Advisor engaged Lawyer to provide tax advice including a tax opinion to be rendered to the investors of REIT.

In Month 2 of Year 1, Vice President realized that a TRS election had not been filed for Corporation. While Advisor understood that it was necessary to utilize a TRS to serve as a lessee of the healthcare properties, Vice President and the other members of Advisor's tax department were unaware of the need to file an actual TRS election within a proscribed time frame.

In late Month 2 of Year 1, Vice President discussed the failure to file the TRS election with Accountant. Accountant advised that Taxpayer and Corporation file a Form 8875 and seek a letter ruling requesting an extension of time to make the election. Taxpayer and Corporation filed the Form 8875 on Date 4.

Taxpayer and Corporation make the following representations. The granting of relief under section 301.9100-3 would not result in Taxpayer or Corporation having a lower tax liability in the aggregate for all years to which the election applies than each would have had if the election had been timely made (taking into account the time value of money). Neither Taxpayer nor Corporation knowingly chose not to file the election. Neither Taxpayer nor Corporation used hindsight in requesting relief. Finally, Taxpayer and Corporation represent that they are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662. Taxpayer has submitted affidavits of Vice President and an employee of Lawyer all attesting to and supporting the facts and representations underlying this ruling request.

### **Law and Analysis:**

Section 856(l) provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form, which is filed with the IRS Service Center in Ogden, Utah.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in

the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith, and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based on the information submitted and representations made, we conclude that Taxpayer and Corporation have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Corporation as a TRS of Taxpayer effective as of Date 3. Accordingly, Taxpayer and Corporation are granted 30 days from the date of this letter in which to file Form 8875 to make the intended TRS election.

This ruling is limited to the timeliness of the filing of the Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT or whether Corporation would otherwise qualify as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Taxpayer or Corporation is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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David B. Silber  
Chief, Branch 2  
(Financial Institutions & Products)